



**CITY OF LODI
COUNCIL COMMUNICATION**

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AGENDA TITLE: Approve contract with Kronick Moskowitz Tiedemann & Girard for Services as Bond Counsel in Connection with the formation of Community Facilities Districts.

MEETING DATE: January 17, 2007 City Council Meeting

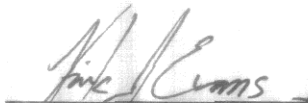
PREPARED BY: City Attorney's Office


RECOMMENDED ACTION: Approve contract with Kronick Moskowitz Tiedemann & Girard for services as Bond Counsel in connection with the formation of Community Facilities Districts.

BACKGROUND: Staff is moving forward on the City Council's direction to create community facilities districts to fund the impacts associated with new developments. Because the funds to create the development related improvements will not be available up front from the developments, bond financing will be required to construct the contemplated public improvements, including the water treatment facility. Toward that end, the City will be required to have outside bond counsel. Although the City has traditionally used lawyers from Orrick Herrington for bond counsel, equally qualified bond counsel is available through Kronick Moskowitz at significantly reduced rates as set forth in the attached contract. Accordingly, staff recommends approval of the attached contract.

FISCAL IMPACT: Staff anticipates no fiscal impact because fees will be charged to the developers pursuant to the development agreements.

FUNDING AVAILABLE: As specified above.


Kirk Evans, Budget Manager


Stephen Schwabauer, City Attorney

APPROVED:


Blair King, City Manager

CITY OF LODI

AGREEMENT FOR BOND COUNSEL AND DISCLOSURE SERVICES

This Agreement is between Kronick, Moskovitz, Tiedemann & Girard, a Professional Corporation (hereinafter "KMTG"), and the City of Lodi (hereinafter "Client"). The subject matter of the representation governed by this Agreement is described in Paragraph 1. KMTG currently represents Client on a variety of other matters pursuant to a separate legal services agreement.

1. **Scope of Services.** Client retains KMTG under this Agreement to provide such legal services as necessary for the formation of a water treatment community facilities district and a services community facilities district (the "CFDs"), the authorization of special taxes, and the authorization and issuance of bonds for the water treatment community facilities district (the "Bonds") to finance services and public improvements to serve various developments known as Westside, Southwest Gateway and Reynolds Ranch (the "Developments") currently being annexed into the City of Lodi. In particular, KMTG shall:

(a) Consult with Client and its administrative officers, financial advisor, special tax consultant, and other consultants and assist in the implementation of the financing.

(b) Prepare all resolutions of Client's governing board and other legal documents necessary for formation of the CFDs, authorization of special taxes in the CFDs, and the authorization, issuance and delivery of the Bonds.

(c) Confer with Client's other consultants regarding the rate and method of apportionment of the special tax and the structure of the bond issue(s) and review any documents to be prepared by such other parties in the proceedings for compliance with law.

(d) Prepare for and attend such meetings of Client's governing board as deemed necessary for the proper conduct of the proceedings.

(e) Without undertaking an independent investigation, review any official statement, private placement memorandum, or other offering document prepared in connection with the sale of the Bonds.

(f) Prepare a preliminary and final official statement describing the terms of the Bonds offered for sale, security for their repayment, credit enhancements (if any) and their issuer(s), the Client and its financial condition, material risks to prospective purchasers of the bonds, legal matters related to the financing, credit ratings of the bonds, contractual arrangements between the Client and the underwriter(s) of the bonds, and other information material to prospective purchasers of the bonds.

(g) Prepare a comprehensive closing memorandum and prepare and arrange the execution and delivery of the Bonds (in typewritten, book-entry form), a receipt for the Bonds, a receipt for the proceeds of the Bonds, signature certificates, an arbitrage/rebate certificate and associated certificate of the underwriter, Form 8038-G, continuing disclosure

agreement, CDIAAC report of final sale, forms of opinions of other counsel, and all other necessary closing certificates/documents.

(h) Assuming completion of the preliminary and final official statements in form acceptable to KMTG, deliver a letter addressed to the Client with respect to the bonds to the effect that, in the course of KMTG's participation in the preparation of the official statement for the financing, nothing came to the attention of those attorneys rendering legal services to the Client that caused KMTG to believe that such official statements as of its date and as of the date of the letter (except for financial data or forecasts, estimates, assumptions, or expressions of opinion, or any information regarding The Depository Trust Company or any credit enhancer) contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(i) Prepare and deliver to each participant in the financing a complete transcript of the proceedings for the formation of the CFDs, authorization of special taxes in the CFDs, and the authorization, issuance, and sale of the Bonds.

(j) Upon due and proper completion of the proceedings, deliver our final approving opinion confirming the validity of the Bonds and opinions that interest on the Bonds is excluded from gross income for federal income tax purposes and is exempt from State of California personal income taxes, under existing statutes, regulations, rulings, and court decisions.

2. **Commencement of Services.** KMTG's obligation to provide legal services under this Agreement shall commence upon KMTG's receipt of a copy of this Agreement signed and dated by Client.

3. **Completion of Services.** KMTG's representation of Client with respect to each series of Bonds will be concluded upon their issuance. Nevertheless, subsequent to issuance, KMTG will prepare and distribute to the participants in each transaction a transcript of the proceedings.

4. **Duties of KMTG and Client**

(a) **Duties of KMTG.** KMTG shall provide those legal services reasonably required to represent Client in the matters described in Paragraph 1 of this Agreement. KMTG shall also take reasonable steps to keep Client informed of significant developments and to respond to Client's inquiries.

(b) **Duties of Client.** Client shall cooperate with KMTG, keep them informed of developments, perform the obligations it has agreed to perform under this Agreement, and pay KMTG's bills in a timely manner.

5. **KMTG Personnel.** While one attorney at KMTG may be primarily responsible for completing the work that is within the scope of this Agreement, that attorney may also delegate work to other attorneys, paralegals, law clerks and office personnel within KMTG when it is determined that such delegation is appropriate in representation of Client's interests. If

Client so requests, Client will be notified prior to any delegation and a decision will be made in consultation with Client.

6. **Disclaimer of Guarantee.** KMTG cannot guarantee the successful conclusion of any legal matter. KMTG has made no promises or guarantees to Client about the outcome of Client's matters, and nothing in this Agreement shall be construed as such a promise or guarantee.

7. **Compensation.**

For the services described in Section 1, KMTG will bill and Client will pay hourly fees at the rates described in Exhibit A, billed monthly. Client shall pay statements from KMTG within thirty (30) days after each statement's date. In addition to its fees for legal services, KMTG will bill Client for its out-of-pocket expenses, such as travel, delivery and courier service, postage, long distance telephone tolls, and similar expenses.

The fees and expenses due pursuant to this Agreement shall be subject to the City of Lodi Billing Guidelines dated February 20, 2004 as previously provided to KMTG.

8. **Abandonment.** If for any reason the financing is abandoned or terminated prior to the issuance of Bonds, then KMTG will charge Client a fee determined by the extent of the services rendered by KMTG to the date of the abandonment or termination of the proposed financing at the hourly rates specified in Exhibit A, together with KMTG's out-of-pocket expenses; provided that such fees and expenses shall not exceed \$20,000.

9. **Additional Legal Services.** In addition to the bond counsel services described in Section 1 above relating to the formation of the CFDs and issuance of Bonds, KMTG, as requested by Client, will also prepare and negotiate ancillary agreements between Client and the owners of the Developments, and shall render such advice as is requested by Client in connection with such documents.

Client agrees to pay for these additional legal services at the hourly rates set forth in Exhibit A, together with any related out-of-pocket expenses. KMTG shall send Client a statement for the fees and costs incurred relating to the additional services every month.

10. **Legal Action Upon Default.** If Client does not pay the balance when due or breaches any other terms of this Agreement, KMTG may commence any legal action for collection of the balance due. Client and KMTG agree that all legal proceedings related to the subject matter of this Agreement shall be maintained in courts sitting within the State of California, County of San Joaquin. Client and KMTG agree that the jurisdiction and venue for such proceedings shall lie exclusively with such courts.

11. **Arbitration of Fee Dispute.** If a dispute arises between KMTG and Client regarding KMTG's fees or costs under this Agreement and KMTG files suit in any court, or begins an arbitration proceeding other than through the State Bar or a local bar association under Business and Professions Code Sections 6200-6206, Client will have the right to stay that suit or arbitration proceeding by timely electing to arbitrate the dispute through the State Bar or a local bar association under Business and Professions Code Sections 6200-6206, in which event KMTG must submit the matter to that arbitrator.

12. **Termination**. This Agreement may be terminated by Client or KMTG, or modified by mutual consent, at any time. KMTG and Client each agree to sign any documents reasonably necessary to complete KMTG's discharge or withdrawal. If Client terminates this Agreement, then Client shall pay KMTG a fee determined by the extent of the services rendered by KMTG to the date of the termination at the hourly rates specified on Exhibit A, together with KMTG's out-of-pocket expenses, but not in excess of the amounts specified in Section 7.

13. **Client Files**. At Client's request, upon the termination of services under this Agreement, KMTG will promptly release all of Client's papers and property to Client (subject to any applicable protective orders or non-disclosure agreements).

14. **Destruction of Client File**. If Client does not request the return of Client's papers and property, KMTG will retain Client's file for a period of seven years from the date of delivery of the obligations, after which time KMTG may have Client's file destroyed. Client acknowledges that it will not be notified prior to the destruction of its papers and property and consents to the same. If Client desires to have Client's file maintained beyond seven years after Client's matter is concluded, separate arrangements with KMTG must be made.

15. **Modification by Subsequent Agreement**. This Agreement may be modified only by a written instrument signed by both parties.

KMTG:

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD,
A Professional Corporation

DATED: _____

By: _____
Robert E. Murphy

CLIENT:

CITY OF LODI

DATED: _____

By: _____
Bob Johnson, Mayor of the City of Lodi

APPROVED AS TO FORM:

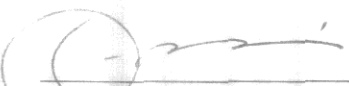
32: 
D. Stephen Schwabauer
City Attorney

EXHIBIT A

Hourly Rates

KMTG's rate schedule for public finance matters as of the date of this Agreement is as set forth below:

Shareholders	\$190-235
Principals/Senior Associates	\$175-190
Associate Attorneys	\$150-170
Paralegals	\$85-125
Document Clerk/Law Clerk	\$50-120

Jon Cristy's current hourly rate for this fee agreement is \$225.

Constantine Baranoff's current hourly rate for this fee agreement is \$190.